

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 5, 2007

No. 07-40133
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALFONSO LOPEZ-MORALES

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-1203-1

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Alfonso Lopez-Morales was convicted on a guilty plea to two charges: possessing heroin and methamphetamine, respectively, each with intent to distribute. He was sentenced to 168 months in prison.

Lopez asserts the district court erred by applying a presumption of reasonableness to the advisory guidelines sentencing range and by failing to give sufficient weight to the sentencing factors of 18 U.S.C. § 3553(a). Lopez thus contends his sentence is unreasonable and should be vacated. The record refutes

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Lopez's assertions. The district court's remarks at sentencing show that Lopez's sentence was the result of a balancing of the proper factors, including the guidelines and the considerations of § 3553(a). There is no indication in the record that Lopez-Morales's sentence is the result of "a clear error in the court's exercise of its broad sentencing discretion." See *United States v. Nikonova*, 480 F.3d 371, 376 (5th Cir. 2007), cert. denied, 128 S. Ct. 163 (2007).

Lopez further asserts this court's jurisprudence affording a presumption of reasonableness to a sentence falling within a properly calculated guidelines range is contrary to *United States v. Booker*, 543 U.S. 220 (2005). As Lopez concedes, this claim is foreclosed by *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

AFFIRMED.